

105TH CONGRESS
2D SESSION

S. 2207

To amend the Clayton Act to enhance the authority of the Attorney General to prevent certain mergers and acquisitions that would unreasonably limit competition.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 1998

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Clayton Act to enhance the authority of the Attorney General to prevent certain mergers and acquisitions that would unreasonably limit competition.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Improve-
5 ments Act of 1998”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to enhance the authority
8 of the Attorney General to prevent certain mergers and
9 acquisitions that would unreasonably limit competition in

1 the telecommunications industry in any case in which cer-
 2 tain Federal requirements that would enhance competition
 3 are not met.

4 **SEC. 3. RESTRAINT OF TRADE.**

5 The Clayton Act (15 U.S.C. 12 et seq.) is amended
 6 by adding at the end the following new section:

7 **“SEC. 27. RESTRAINT OF TRADE REGARDING TELE-**
 8 **COMMUNICATIONS.**

9 “(a) LARGE LOCAL TELEPHONE COMPANY DE-
 10 FINED.—In this section, the term ‘large local telephone
 11 company’ means a local telephone company that, as of the
 12 date of a proposed merger or acquisition covered by this
 13 section, serves more than 5 percent of the telephone access
 14 lines in the United States.

15 “(b) RESTRAINT OF TRADE REGARDING TELE-
 16 COMMUNICATIONS.—Notwithstanding any other provision
 17 of law, a large local telephone company, including any af-
 18 filiate of such a company, shall not merge with or acquire
 19 a controlling interest in another large local telephone com-
 20 pany unless—

21 “(1) the Attorney General finds that the pro-
 22 posed merger or acquisition will promote competition
 23 for telephone exchange services and exchange access
 24 services; and

1 “(2) the Federal Communications Commission
2 finds that each large local telephone company that
3 is a party to the proposed merger or acquisition,
4 with respect to at least $\frac{1}{2}$ of the access lines in each
5 State served by that company, of which at least $\frac{1}{2}$
6 are residential access lines, has fully implemented
7 the requirements of sections 251 and 252 of the
8 Communications Act of 1934 (47 U.S.C. 251, 252),
9 including the regulations of the Commission and of
10 the States that implement those requirements.

11 “(c) REPORT OF THE ATTORNEY GENERAL.—Not
12 later than 10 days after the Attorney General makes a
13 finding described in subsection (b)(1), the Attorney Gen-
14 eral shall submit to the Committee on the Judiciary of
15 the Senate and the Committee on the Judiciary of the
16 House of Representatives a report on the finding, includ-
17 ing an analysis of the effect of the merger or acquisition
18 on competition in the United States telecommunications
19 industry.

20 “(d) APPLICATION PROCESS.—

21 “(1) IN GENERAL.—Each large local telephone
22 company or affiliate of a large local telephone com-
23 pany proposing to merge with or acquire a control-
24 ling interest in another large local telephone com-
25 pany shall file an application with both the Attorney

1 General and the Federal Communications Commis-
2 sion, on the same day.

3 “(2) DECISIONS.—The Attorney General and
4 the Federal Communications Commission shall issue
5 a decision regarding the application within the time
6 period applicable to review of mergers under section
7 7A of this Act.

8 “(e) JURISDICTION OF THE UNITED STATES
9 COURTS.—

10 “(1) IN GENERAL.—The district courts of the
11 United States are vested with jurisdiction to prevent
12 and restrain any mergers or acquisitions described
13 in subsection (d) that are inconsistent with a finding
14 under subsection (b) (1) or (2).

15 “(2) ACTIONS.—The Attorney General may in-
16 stitute proceedings in any district court of the
17 United States in the district in which the defendant
18 resides or is found or has an agent and that court
19 shall order such injunctive, and other relief, as may
20 be appropriate if—

21 “(A) the Attorney General makes a finding
22 that a proposed merger or acquisition described
23 in subsection (d) does not meet the applicable
24 condition under subsection (b)(1); or

1 “(B) the Federal Communications Com-
 2 mission makes a finding that 1 or more of the
 3 parties to the merger or acquisition referred to
 4 in subsection (b)(2) do not meet the require-
 5 ments specified in that subsection.”.

6 **SEC. 4. PRESERVATION OF EXISTING AUTHORITIES.**

7 (a) IN GENERAL.—Nothing in this Act or the amend-
 8 ments made by this Act shall be construed to modify, im-
 9 pair, or supersede the applicability of the antitrust laws,
 10 or any authority of the Federal Communications Commis-
 11 sion under the Communications Act of 1934 (47 U.S.C.
 12 151 et seq.), with respect to mergers, acquisitions, and
 13 affiliations of large incumbent local exchange carriers.

14 (b) ANTITRUST LAWS DEFINED.—In this section, the
 15 term “antitrust laws” has the meaning given that term
 16 in the first section of the Clayton Act (15 U.S.C. 12).

17 **SEC. 5. APPLICABILITY.**

18 This Act and the amendments made by this Act shall
 19 apply to a merger or acquisition of a controlling interest
 20 of a large local telephone company (as that term is defined
 21 in section 27 of the Clayton Act, as added by section 3
 22 of this Act), occurring on or after the date of enactment
 23 of this Act.

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